

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

_____)	
In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	
_____)	

**REPLY OF SBC COMMUNICATIONS INC. TO OPPOSITIONS
TO PETITION FOR RECONSIDERATION OF IOWA
TELECOMMUNICATIONS SERVICES, INC.**

In the *Triennial Review Remand Order*, in response to the D.C. Circuit's direction that it consider both actual and potential deployment of alternative facilities in evaluating impairment,¹ the Commission established impairment criteria for dedicated transport that classify wire centers according to whether they have a certain number of business lines *or* a certain number of competitive carriers have obtained fiber-based collocation.² But, as Iowa Telecom correctly observed in its petition for reconsideration, these criteria substantially understate the extent of *actual* competition because they ignore alternative fiber networks and other competitive transport facilities that bypass ILEC networks altogether.³ To ameliorate this deficiency (at least in part), Iowa Telecom proposed that the Commission add a third disjunctive criterion for classifying a wire center as a Tier 1 or Tier 2 under the Commission's transport impairment

¹ *USTA v. FCC*, 359 F.3d 554 (D.C. Cir.) (*USTA II*), *cert. denied*, 125 S. Ct. 313 (2004).

² *Unbundled Access to Network Elements*, WC Docket No. 04-313, Order on Remand, 20 FCC Rcd 2533 (2005) (*Triennial Review Remand Order*).

³ Petition for Reconsideration of Iowa Telecommunications Services, Inc. (D/B/A/ Iowa Telecom), WC Docket No. 04-313 at 5 (filed Mar. 28, 2005).

analysis. In particular, it proposed that the Commission consider “the presence of . . . competitive dedicated interoffice transport providers, each with a point of presence anywhere in the wire center.”⁴

Not surprisingly, MCI and a coalition of CLECs, for whom no amount of unbundling is enough, oppose Iowa Telecom’s petition.⁵ For the most part, these CLECs simply reiterate their arguments in favor of a conjunctive test for evaluating transport impairment, pursuant to which a wire center would be deemed unimpaired only if it has *both* a certain number of business lines *and* fiber-based collocators.⁶ But, as SBC already has demonstrated, these arguments are meritless and flatly inconsistent with the D.C. Circuit’s admonition that the Commission must consider not only whether CLECs already have deployed their own facilities, but also whether they are capable of competing in a market without UNEs in assessing impairment.⁷

Birch *et al.* and MCI contend that the alternative fiber networks identified under Iowa Telecom’s proposed third criterion are irrelevant because “they do not run between ILEC offices” and therefore, purportedly, do not provide an alternative for accessing loops in those

⁴ Iowa Telecom at 4.

⁵ Opposition to Petition for Reconsideration of Birch Telecom, Inc., *et al.* (filed Jun. 6, 2005); Comments of MCI on Petitions for Reconsideration and/or Clarification (filed Jun. 6, 2005).

⁶ Birch *et al.* at 2-6; MCI at 16-19. MCI also supports Birch’s petition for reconsideration of the Commission’s loop and transport unbundling rules, and CTC’s petition to modify the transition rules. MCI at 4-9, and 10-16. Because MCI simply regurgitates the arguments made by these petitioners, to which SBC already has responded fully (SBC Comments at 8-25, and 29-47), SBC does not address those arguments here.

⁷ *USTA II*, 359 F.3d at 575 (in evaluating impairment, the Commission must consider whether competition is possible without UNEs, and may not ignore facilities deployed along similar routes). Birch *et al.* contend that their conjunctive test does not ignore potential deployment because, it claims, “a significant number of wire centers [that meet the business line thresholds] still [do] not have multiple fiber based collocators. Birch *et al.* at 4. This claim not only is absurd, but also a gross mischaracterization of the record. As SBC pointed out in its comments, the Commission justified the business line thresholds it adopted for Tier 1 and Tier 2 wire centers on the grounds that over 90 percent of Tier 1 wire centers already contain at least four or more fiber-based collocators (and over 98 percent contain at least one or more), and approximately 70 percent of Tier 2 wire centers contain three or more fiber-based collocators (and at least one fiber-based collocator is present in 92 percent of such wire centers). SBC Comments at 28 n. 18, citing *TRRO* at paras. 115, 119.

offices.⁸ This complaint is nothing more than a reprise of their argument that only existing alternative facilities should be considered in evaluating impairment, and thus is equally inconsistent with the statute.⁹ The fact that alternative fiber does not precisely track ILEC facilities, or is not collocated in an ILEC central office, is beside the point. Irrespective of whether fiber is *near* an ILEC central office, or actually collocated *in* it, “the presence of competitive transport facilities in [a] wire center . . . signals that sufficient revenues are available from customers served by that wire center to justify the deployment of transport facilities,”¹⁰ and thus that competition is possible without UNEs.

In any event, it is not true, as Birch *et al.* and MCI claim, that such facilities do not provide an alternative for ILEC transport. As SBC observed in its comments,¹¹ and in its comments in the Commission’s special access proceeding, competitive carriers increasingly can rely on one of the hundreds of carrier hotels in SBC’s territory as an alternative to collocation in an SBC wire center to access SBC facilities and alternative transport facilities.¹² These arrangements allow carriers and other customers to install equipment and facilities in a centralized location physically independent of the incumbent carrier, and then to connect to the ILEC’s central office using common transmission facilities, eliminating the need for every

⁸ Birch *et al.* at 5; MCI at 18.

⁹ *USTA II*, 359 F.3d at 575 (the Commission may not “simply ignore facilities deployment along similar routes when assessing impairment”); *USTA v. FCC*, 290 F.3d 415, 427 (D.C. Cir. 2002) (*USTA I*), *cert. denied*, 538 U.S. 940 (2003) (in evaluating impairment, the Commission must determine where facilities are “[s]uitable for competitive supply”); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 389 (1999) (the Commission “cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent’s network”).

¹⁰ *Triennial Review Remand Order* at para. 96.

¹¹ SBC Comments at 28.

¹² Comments of SBC Communications Inc., WC Docket No. 05-25 at 16, and Attachment A (Declaration of Parley Casto) at 17 (filed Jun. 13, 2005) (SBC Special Access Comments).

competitive carrier to collocate in each ILEC wire center in which it seeks to offer service.¹³

Moreover, the Commission has properly recognized that CLECs are not impaired without unbundled access to the facilities necessary to connect CLEC networks to ILEC network.¹⁴

Competing carriers thus can and do obtain direct access to competitive transport networks, and indirect access to loops in any SBC central office that is connected to those alternative networks, without any reliance on SBC's interoffice transport facilities.

The Commission therefore should grant Iowa Telecom's petition for reconsideration, and ensure that these alternative facilities are not arbitrarily excluded from the Commission's analysis.

Respectfully submitted,

/s/ Christopher M. Heimann

CHRISTOPHER M. HEIMANN
JAMES P. LAMOUREUX
GARY L. PHILLIPS
PAUL K. MANCINI

SBC COMMUNICATIONS INC.
1401 I Street, N.W. – Suite 400
Washington, D.C. 20005
202-326-8909. *Phone*

June 20, 2005

¹³ *Id.*, Attachment A at 17.

¹⁴ *Triennial Review Remand Order* at paras. 138-139.

CERTIFICATE OF SERVICE

I, Weyatta E. Wureh, hereby certify that on this 20th day of June, 2005, copies of the foregoing Reply Comments of SBC Communications, Inc. to Oppositions to Petition for Reconsideration of Iowa Telecommunications Services, Inc. were served upon each of the parties on the following service list by first-class mail, postage prepaid.

/s/ Weyatta E. Wureh

Weyatta E. Wureh

June 20, 2005

**AMERICAN PUBLIC COMMUNICATIONS
COUNCIL
NAVIGATOR TELECOMMUNICATIONS, LLC
NII COMMUNICATIONS
SYMTELCO, LLC**

Albert H. Kramer
Robert F. Aldrich
Jacob S. Farber

**DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L STREET, NW
WASHINGTON, DC 200037-1526**

**BELLSOUTH CORPORATION
Bennett L. Ross
1133 21ST STREET, NW, SUITE 900
WASHINGTON, DC 20036**

Richard M. Sbaratta
Theodore R. Kingsley
Meredith E. Mays
675 W. Peachtree St, NE
Atlanta, GA 30375-0001

**BIRCH TELECOM, INC.
BRIDGECOM INTERNATIONAL, INC.
BROADVIEW NETWORKS
ESCHELON TELECOM, INC.
NUVOX COMMUNICATIONS, INC.
SNIPLINK, LLC
XO COMMUNICATIONS, INC.
XSPEDIUS COMMUNICATIONS, LLC**

Brad E. Mutschelknaus
Steven A. Augustino
Scott A. Kassman
Kelley Drye & Warren, LLP
1200 19TH Street, NW, 5th Floor
Washington, DC 20006

**CTC COMMUNICATIONS CORP.
GILLETTE GLOBAL NETWORK, INC.
D/B/A EUREKA NETWORKS
GLOBALCOM, INC.
LIGHTWAVE COMMUNICATIONS, LLC
MCLEODUSA, INC.
MPower COMMUNICATIONS CORP
PAC-WEST TELECOMM, INC.
TDS METROCOM, LLC
US LEC CORP.**

Andrew D. Lipman
Russell M. Blau
Patrick J. Donovan
Edward W. Kirsch
Joshua M. Bobeck
Swidler Berlin LLP
3000 K Street, NW, Suite 300
Washington, DC 20007

CBEYOND COMMUNICATIONS LLC

Thomas Jones
Jonathan Lechter
Wilkie Farr & Gallagher LLP
1875 K Street, NW
Washington, DC 20006

IOWA TELECOMMUNICATIONS SERVICES, INC.**D/B/A IOWA TELECOM**

Donald G. Henry
Edward B. Krachmer
115 S. Second Avenue West
P.O. Box 1046
Newton, IA 50208

MCI, INC.

John R. Delmore
1133 19th Street, NW
Washington, DC 20036

Marc A. Goldman
Jenner & Block LLP
301 13TH Street, NW – Suite 1200 South
Washington, DC 20005

PACE COALITION

Genevieve Morelli
Jennifer M. Kashatus
Erin W. Emmott
Kelley Drye & Warren, LLP
1200 19th Street, NW – Suite 500
Washington, DC 20036

**QWEST COMMUNICATIONS INTERNATIONAL,
INC.**

Craig J. Brown
Blair A. Rosenthal
607 14th Street, NW – Suite 950
Washington, DC 20005

T-MOBILE USA, INC.

Thomas J. Sugrue
James W. Hedlund
T-Mobile USA, Inc.
401 9th Street, NW- Suite 550
Washington, DC 20004

VERIZON

Michael E. Glover
Edward Shakin
1515 N. Courthouse Road, Suite 500
Arlington, VA 22201-2909

Scott H. Angstreich
Kellogg, Huber, Hansen, Todd, Evans,
& Figel, PLLC
1615 M Street, NW – Suite 400
Washington, DC 20036